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**In the
Supreme Court of the United States**

OCTOBER TERM, 1925

No. 106

RHODE ISLAND HOSPITAL TRUST COMPANY,
EXECUTOR OF GEORGE BRIGGS, DECEASED,
Plaintiff in Error

vs.

RUFUS A. DOUGHTON, *Commissioner of Revenue of
the State of North Carolina*

**In Error to the Supreme Court' of the State
of North Carolina**

REPLY BRIEF OF PLAINTIFF IN ERROR

JOHN M. ROBINSON,
WILLIAM R. TILLINGHAST,
JAMES C. COLLINS,
Attorneys for Plaintiff in Error.

COLIN MACR. MAKEPEACE,
of Counsel.

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I

R. J. REYNOLDS TOBACCO COMPANY NOT A NORTH CAROLINA CORPORATION

We are at a loss to understand why the defendant in error, at the bottom of page one of its brief, states that the R. J. Reynolds Tobacco Company "had also been incorporated in North Carolina, February 27th, 1899," and why, as an appendix to its brief, it attaches a copy of chapter 109 of the Private Laws of 1899.

Surely it does not desire to create the impression that the Tobacco Company is a North Carolina corporation. As a matter of fact, the present case has been tried upon an agreed statement of facts, which will be found in the record, beginning at page 22. In this agreed statement it is expressly stipulated: "The R. J. Reynolds Tobacco Company (hereinafter for brevity called the Tobacco Company), is a corporation created under the laws of the State of New Jersey and is now, and has at all times named been a corporation of the State of New Jersey" (Record, 22).

From the very beginning of the present controversy the Tobacco Company has been treated by all parties as a corporation of New Jersey and a non-resident of North Carolina. It was so treated in the trial court, and so dealt with by the Supreme Court of North Carolina.

It would seem, therefore, that the defendant in error, in making the statement above quoted, and in attaching the appendix to its brief, has departed from the record. In order to meet this rather unusual situation, it has been necessary for us to obtain an affidavit from the Tobacco Company, a copy of which is attached as an appendix to this brief.

From that affidavit it will be seen that chapter 109 of the Private Laws of 1899, copied in the appendix to the brief of the defendant in error, is entirely obsolete; that in the year 1899 a charter was obtained from the State of New Jersey and the R. J. Reynolds Tobacco Company was organized thereunder; and that the New Jersey corporation thus formed is the one which owns the property and operates the business in North Carolina. The affidavit states: "That the organization of the corporation was not perfected under Chapter 109, Private Laws of North Carolina 1899, because of the fact that shortly after the passage of said act, the organization under the New Jersey charter hereinbefore referred to, was effected." The affidavit states further that: "The entire property is now owned, and the business conducted, solely under the New Jersey charter; that said R. J. Reynolds Tobacco Company operates in the State of North Carolina as a New Jersey corporation solely, and that its entire stock is issued in said New Jersey corporation."

We respectfully submit, therefore, that the statement referred to in the brief of the defendant in error, and the appendix thereto, tends only to confuse

the clear-cut question before the court in this case. Indeed, the defendant in error, after attaching a copy of said Private Act to its brief, does not again refer to it but proceeds to argue the case as if the Tobacco Company were a New Jersey corporation.

II

THE CORPORATE ENTITY SHOULD NOT BE DISREGARDED

The defendant in error, in a strenuous effort to uphold the present tax, insists that the State Legislature had the power to disregard the "corporate fiction."

It is, of course, true that, in exceptional cases, the Court will disregard the corporate entity. This, however, as we understand it, is resorted to in order to prevent injustice or to circumvent manifest fraud. Surely no such case is presented by the present record; for it has never been contended that the Tobacco Company is using its corporate entity as a cloak for fraud, or as a means of wrong-doing in any way. On the contrary, the record shows that it began business in North Carolina, as a foreign corporation, long before the Act in question was ever contemplated. Our research has failed to disclose a single case wherein the corporate entity has been disregarded in order to support a tax for which the corporation admittedly is not liable.

If a state may utterly disregard the entity of a foreign corporation, owning property within its borders, solely for the purpose of collecting taxes out of non-resident stockholders of the corporation, it may disregard that entity for any and all purposes. We can think of no limit to such a doctrine. We submit that it would not only be contrary to fundamental conceptions, but that it would lead inevitably to chaos.

We submit that power to punish cannot be used as a substitute for jurisdiction to tax. The fact that the State of North Carolina has the power to punish the Tobacco Company for transferring the stock before payment of the tax, by taking property of the company located in the state, does not confer jurisdiction.

The vital fact in the case is that the decedent Briggs, owned no property within the taxing state. He had no right to segregate to himself a square inch of the land, a brick of the buildings, a dollar in the bank, or a single package of cigarettes. All the property within the taxing state was owned solely by the corporation—both before and after the death of Briggs.

In the recent case of *State vs. Walker*, 226 Pac., 894, the Supreme Court of Montana, in commenting upon the decision in the instant case said:

“The general principles of law announced in the majority opinion of the Supreme Court of North Carolina in the very recent case of *Rhode Island Hospital Trust Co. vs. Doughton*, 121

S. E., 741, gives recognition to all of the well-established rules of law applicable in the levy of a succession or inheritance tax, and then holds that since the corporation is possessed of property within the territorial confines of North Carolina, the shareholder has an interest in the property represented by his shares of stock sufficient to confer jurisdiction upon the State of North Carolina to impose a succession tax. It is said in the majority opinion:

“We think, that the Legislature intended to put aside the fiction of separate interests between the corporation and its shareholders and to impose an inheritance tax upon the transfer by will or devolution of the interests of non-resident stockholders in corporations, chartered in any other state or country.’

“The decision in that case is illogical in conclusion, and contrary to the overwhelming weight of authority. We refuse to follow it.”

III

THE ECONOMIC POLICY PURSUED BY THE STATE OF NORTH CAROLINA CANNOT DEPRIVE THE PLAINTIFF IN ERROR OF ITS FEDERAL RIGHTS

The defendant in error, in its brief, emphasizes the fact that it has been the state policy, in levying *ad valorem* taxes, to tax the property of the corpora-

tion and not the individual shares of stock therein. Certainly this was not disregarding the corporate entity.

At any rate, we are at a loss to understand how this policy could affect the Federal rights of the present plaintiff in error. Neither Briggs nor the plaintiff ever took any benefit under the economic policy of the State of North Carolina, pursued by it in levying *ad valorem* taxes.

The case of *Person vs. Watts*, 184 N. C., 499, strenuously relied upon by our opponents, involved simply a construction of a clause of the state constitution relating to *ad valorem* taxes. All parties were residents of North Carolina. No rights under the Federal Constitution were involved.

In conclusion, we repeat that no property was owned or transferred within, or by virtue of the laws of, the State of North Carolina. Hence there was, we submit, no jurisdiction to tax.

Respectfully submitted,

JOHN M. ROBINSON,

WILLIAM R. TILLINGHAST,

JAMES C. COLLINS,

Attorneys for Plaintiff in Error.

COLIN MACR. MAKEPEACE,
of Counsel.

EXHIBIT A

NORTH CAROLINA,
FORSYTH COUNTY.

S. CLAY WILLIAMS, being first duly sworn, deposes and says: that he is an officer of R. J. Reynolds Tobacco Company, to-wit: one of its Vice-Presidents. Affiant further states, upon information obtained by him from records and other reliable sources, that for a number of years beginning about the year 1875, Mr. R. J. Reynolds, individually, conducted the business which was later taken over as hereinafter set forth; that about the year 1888 he took into partnership with him certain other gentlemen and continued to operate said business as a partnership until about 1890; that, in the year 1890, a charter was obtained from the State of North Carolina and R. J. Reynolds Tobacco Company was organized thereunder; that the corporation thus formed took over said partnership business of R. J. Reynolds & Company; that said business was operated under the North Carolina charter until the year 1899; that, during the year 1899, a charter for the R. J. Reynolds Tobacco Company was procured in the State of New Jersey; that the corporation was duly organized and perfected under said charter and the entire business and property was transferred to said New Jersey corporation, and the North Carolina corporation was immediately dissolved: that since that time the entire property has

been owned and the entire business has been conducted solely under the charter issued by the State of New Jersey in the year 1899; that the organization of the corporation was not perfected under Chapter 109, Private Laws of North Carolina 1899, because of the fact that shortly after the passage of said Act the organization under the New Jersey charter hereinbefore referred to was effected.

Affiant further states that, as hereinbefore set forth, the entire property is now owned and the business conducted solely under the New Jersey charter; that said R. J. Reynolds Tobacco Company operates in the State of North Carolina as a New Jersey corporation solely and that its entire stock is issued in said New Jersey corporation.

S. CLAY WILLIAMS.

Subscribed and sworn to before me this the 6th day of November, 1925.

M. P. TRAYNOR,
Notary Public.

My Commission Expires August 11, 1927.

